IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

OP.No. 33630 of 2002(C)

PETITIONER:

C.J.BENNY, S/O.C.C.JOSEPH, AGED 33,
CHERIYAKADAVIL HOUSE, MANJUMMAL,
MADAPPAD.

BY ADV. SRI.K.S.MADHUSOODANAN
SRI.B.R.VIJAYAMOHAN

RESPONDENTS:

----

1. **COCHIN UNIVERSITIES OF SCIENCE AND TECHNOLOGY, COCHIN -22 REP. BY REGISTRAR.**

2. **SAJEEV K.P., GARDENER, CENTRE FOR ENGINEERING STUDIES, CUSAT, COCHIN-22.**

3. **ALIKUNJU P.K., GARDENER, GUEST HOUSE, CUSAT, COCHIN-22.**

4. **AYISHA, GARDENER, ADMINISTRATIVE OFFICE, CUSAT, COCHIN-22.**

5. **HASSAN K.M. GARDENER, SCHOOL OF MANAGEMENT STUDIES, CUSAT, COCHIN – 22.**

ADDL. RESPONDENT

6. **K.P.MINI, OVERSEER GRADE II, ENGINEERING DEPARTMENT, COCHIN UNIVERSITY OF SCIENCE & TECHNOLOGY, COCHIN 22.**

BY ADV. SRI.S.GOPAKUMARAN NAIR, SC, COCHIN UTY.
SRI.ASOK M.CHERIAN
SRI.KRB.KAIMAL
SRI.SUNIL CYRIAC, SC, COCHIN UNIVERSITY

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 21/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO . 56830/2002 IN OP. NO.33630/2002

DISMISSED

21.2.2007 **SD/- ANTONY DOMINIC**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE NOTIFICATION NO.AD.A.3.PR.9.78 DT.12.11.92 ISSUED BY THE 1ST RESPONDENT ON 20.11.2000.

EXT.P2:- COPY OF THE COMPLAINT DT. 6.9.02 TO THE 1ST RESPONDENT BY THE PETITIONER.

EXT.P2(a):- COPY OF THE A.D.CARD RECEIVED BY THE 1ST RESPONDENT ON 7.9.02.

RESPONDENTS EXHIBITS

EXT.R6(a):- COPY OF THE MEMO NO.AD.A2/9675/96 (VOL.IV) DT.28.6.99 ISSUED BY THE 1ST RESPONDENT TO THE ADDL. RESPONDENT NO.6.

EXT.R6(b):- COPY OF THE ORDER NO.AD.A2/9675/96 VOL (IV) DT.20.7.99 ISSUED BY THE 1ST RESPONDENT.

EXT.R6(c):- COPY OF THE ORDER NO.AD.A2/9675/96(VOL.IV) DT.24.12.99 ISSUED BY THE IST RESPONDENT.

EXT.R6(d):- COPY OF THE ORDER NO.AD.A2/96575/2000 DT.11.6.01 ISSUED BY THE 1ST RESPONDENT.

EXT.R6(e):- COPY OF THE ORDER NO.AD.A2/9675/2000. VOL.V. DT.5.2.02 ISSUED BY THE 1ST RESPONDENT.

/TRUE COPY/

tss

ANTONY DOMINIC, J.

O.P NO.33630 OF 2002

Dated this the 21th day of February, 2007

J U D G M E N T

The petitioner is a candidate included in the ranklist for the post of Gardener in the Cochin University of Science and Technology. It is stated that the university had issued a notification dated 12/11/92 inviting application for the post of Gardener and in the selection process that ensued, the petitioner was included at rank number 3. It is stated that although reservation is applicable to the appointments in the university despite the university having made six appointments, the petitioner despite being rank no.3 belonging to Latin Catholic (OBC), was not offered appointment. He had lodged a complaint as per Exhibit P2 which was not responded and as the rank list which was published on 20/11/2000, with two years validity period, was expiring on the 19th of November 2002, the petitioner filed this original petition initially with prayers to call for Exhibits P1 and P2 and to direct the university to appoint the petitioner as Gardener with effect from the date when his turn fell due.

Subsequently, on an application made by the petitioner an amendment was incorporated, praying for quashing the appointment of the 6th respondent, although no improvement in the pleadings has been made in support thereof additional prayer.

2. The first respondent University has filed a statement and a counter affidavit. In the counter affidavit, it is stated that when appointment of Gardeners was made, the appointments were made at point No.94, 95, 96, 98, 99 and 100 in a 100 point roster, maintained as consolidated one for Class III category of employees. It is stated that at point No.97, the 6th respondent was appointed as Overseer Grade III (Civil). It is stated that she was included in the ranklist prepared by the University for the post of Overseer and when the turn at point No.97 came, there was a regular vacancy available and thus the 6th respondent was appointed. Affidavits have also been filed by the 6th respondent explaining the background in which she was appointed and she seeks to have her appointment upheld by this court. A reply affidavit has been filed by the petitioner. In the

reply affidavit so filed, the petitioner has found fault with the University in appointing the 6th respondent at point No.97 of the roster.

3. As far as the pleadings of the petitioner as contained in the original petition and the reply affidavit is concerned, the objection that is raised by the petitioner is to the effect that the University committed an illegality in appointing the 6th respondent as an Overseer at point no.97 of the roster maintained for the post of Gardener. According to the petitioner, if point no.97 in the roster maintained for the post of Gardener was filled up by a Gardener, that being an open point, it would have gone to rank no.2, who was accommodated at point No.99 and the petitioner would have found his place at point no.99. This contention of the petitioner has been belied by the fact that the university was only maintaining a common roster for Class III. It is beyond controversy that the post of Gardener as also the post of Overseer belong to Grade III. If that be so, the University cannot be faulted for having appointed the 6th respondent and included her at point No.97 of the common roster. Therefore, this

contention of the petitioner is only to be rejected.

During the course of the arguments, the petitioner raised a contention that the 6th respondent was included in the ranklist of Overseer and that the ranklist was published on 7/7/97 with a validity period of two years. According to the petitioner although the 6th respondent commenced service on provisional basis from 1/7/99, during the currency of the ranklist, the regular vacancy against which she was appointed at point No.97 arose only on 26/11/01 and by that time the ranklist had expired. On this basis it is contended that the appointment of the 6th respondent was made after the expiry of the ranklist and therefore the said appointment is illegal. Counsel for the University and the 6th respondent rightly points out that such a contention of the petitioner is not raised in any of the pleadings. Having gone through the pleadings of the petitioner as contained in the original petition as also the reply affidavit, I do not see such contention raised in the pleadings. Counsel for the petitioner points out that this aspect has been mentioned in a statement filed by him. The statement filed, without amendment to the

pleadings, cannot be relied on to decide the case. It is settled law that unless a contention is raised by pleadings with sufficient particulars, such contentions cannot be taken cognizance of. Such being the position, I am not inclined to entertain the contention raised by the counsel for the petitioner, as it is lacking in the pleadings. In the result, I find no merit in the writ petition and it is dismissed. No costs.

ANTONY DOMINIC, JUDGE

Rp